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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CRAIG J. DUCHOSOIS REVOCABLE)
TRUST UAD 9/11/1989,)
)
 Plaintiff,)
)
 v.) No. 05 C 6603
)
CDX LABORATORIES, INC.,)
)
 Defendant.)

MEMORANDUM ORDER¹

Unpersuaded by the opinion's rejection of CDx's Rule 12(b)(2) challenge to personal jurisdiction over this claim against it, CDx has supplemented its earlier submission by calling to this Court's attention the opinion by its colleague the Honorable Elaine Bucklo in Sungard Data Sys., Inc. v. Cent. Parking Corp., 214 F.Supp 2d 879 (N.D. Ill. 2002). Because CDx "just doesn't get it," this brief memorandum order will try again to point out a critical factor that explains both why the Sungard decision is sound but does not at all call for the result urged by CDx in this case.

Whenever a breach of contract claim is advanced and the question of in personam jurisdiction vel non against an out-of-state defendant is raised, the court's focus must be on the nature of the breach and of its relationship to the forum. What

¹This memorandum order will employ (without having to redefine) the same defined terms as this Court's January 25, 2006 memorandum opinion and order ("Opinion").

Judge Bucklo did quite properly in Sungard was to look at the fact that the original execution of the contract by the out-of-state defendant there may have had substantial Illinois contacts, but that the claimed breach being sued upon involved defendant's actions and inactions that were entirely outside of the Illinois forum. That being so, the fact that defendant's currently asserted nonperformance (nonpayment under the contract) caused economic harm to plaintiff in Illinois did not suffice to support halting defendant into court in this jurisdiction.

Just so, in the present instance the circumstances of the parties' original entry into the transaction--the negotiation and execution of the Convertible Promissory Note--have no relevance to the breach that is now sued upon. As the Opinion has made clear, at this point everything else has fallen away, and the Note's nonpayment stands alone: It and only it remains, and to the Duchossois Trust as the unpaid payee the nonpayment is solely Illinois-related. Thus the reasoning and result in Sungard, rather than supporting CDx, actually buttresses the Duchossois Trust's effort to bring CDx into this forum to defend itself.

That then serves to reinforce both the view and the ruling set out in the Opinion. But it may be worth noting parenthetically that CDx's counsel are not alone in their failure to grasp the vital distinction identified here. By coincidence, another newly-filed case assigned to this Court's calendar last

week involves a reinsurance dispute between two companies, neither of which now has any Illinois contacts. What the plaintiff corporation's lawyers have relied on to bring the action in this judicial district is the fact that the reinsurance agreement (entered into 30 years ago!) had been negotiated through an Illinois-based insurance broker (that was so because defendant's predecessor, as of the time the reinsurance agreement was entered into, was an Illinois company). Because the claimed breaches now sued upon in that case appear to have no Illinois nexus at all, this Court promptly issued a *sua sponte* memorandum order directing plaintiff's counsel to explain why the lawsuit belongs here, rather than in any one of three other jurisdictions that could properly qualify for venue purposes.

In short, this case is not at all a candidate for Emerson's aphorism that "foolish consistency is the hobgoblin of little minds." To the contrary, a consistent focus on the breach being sued upon will regularly provide the correct result where personal jurisdiction is in issue. And in this instance that focus supports keeping CDx in this lawsuit here in Illinois.


Milton I. Shadur
Milton I. Shadur
Senior United States District Judge

Date: January 31, 2006